

## Environmental Protection Agency

## § 35.6600

the price. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

### § 35.6590 Bonding and insurance.

(a) *General.* The recipient must meet the requirements regarding bonding described in 40 CFR 31.36(h). The recipient must clearly and accurately state in the contract documents the bonds and insurance requirements, including the amounts of security coverage that a bidder or offeror must provide.

(b) *Indemnification.* When adequate pollution liability insurance is not available to the contractor, EPA may indemnify response contractors for liability related to damage from releases arising out of the contractor's negligent performance. The recipient must comply with the requirements regarding indemnification described in section 119 of CERCLA.

(c) *Accidents and catastrophic loss.* The recipient must require the contractor to provide insurance against accidents and catastrophic loss to manage any risk inherent in completing the project.

### § 35.6595 Contract provisions.

(a) *General.* Each contract must be a sound and complete agreement, and include the following provisions:

- (1) Nature, scope, and extent of work to be performed;
- (2) Time frame for performance;
- (3) Total cost of the contract; and
- (4) Payment provisions.

(b) *Other contract provisions.* Recipients' contracts must include the following provisions:

(1) *Energy efficiency.* A contract must comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan which is issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(2) *Violating facilities.* Contracts in excess of \$100,000 must contain a provision which requires contractor compli-

ance with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt Federal contracts, grants or loans.

(3) *Patents, inventions, and copyrights.* All contracts must include notice of EPA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed while conducting work under a contract. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 40 CFR 31.34.

(4) *Labor standards.* The recipient must include a copy of EPA Form 5720-4 ("Labor Standards Provisions for Federally Assisted Construction Contracts") in each contract for construction (as defined by the Secretary of Labor in 29 CFR part 5). The form contains the Davis-Bacon Act requirements (40 U.S.C. 276a-276a-7), the Copeland Regulations (29 CFR part 3), the Contract Work Hours and Safety Standards Act Overtime Compensation (940 U.S.C. 327-333), and the non-discrimination provisions in Executive Order 11246, as amended.

(5) *Conflict of interest.* The recipient must include provisions pertaining to conflict of interest as described in § 35.6550(b)(2)(ii) of this subpart.

(c) *Model clauses.* The recipient must comply with the requirements regarding model contract clauses described in 40 CFR 33.1030 (1987).

### § 35.6600 Contractor claims.

(a) *General.* The recipient must conduct an administrative and technical review of each claim before EPA will consider funding these costs.

(b) *Claims settlement.* The recipient may incur costs (including legal, technical and administrative) to assess the merits of or to negotiate the settlement of a claim by or against the recipient under a contract, provided: